

**Before the
Federal Communications Commission
Washington, D.C.**

In the matter of

Implementation of Section 210)	
of the Satellite Home View)	
Extension and Reauthorization Act)	MB Docket No. 05-181
of 2004 to Amend Section 338 of the)	
Communications Act)	
)	

To: Secretary

PETITION FOR RECONSIDERATION

International Broadcasting Corporation, R y F Broadcasting, Inc., Encuentro Christian Network, and Eastern Television Corporation by their counsel and in accordance with Section 1.429 of the rules and regulations of the Federal Communications Commission (“FCC” or “Commission”) hereby submit this petition for reconsideration to the Report and Order¹ in the above mentioned docket. In particular, petitioners request reconsideration of the portion of the Report and Order that adopts rules excluding Puerto Rico from the meaning of “State” as referred to in the Satellite Home Viewer Extension and Reauthorization Act of 2004 (“SHVERA”).²

¹ Implementation of Section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 to Amend Section 338 of the Communications Act, *Report and Order*, FCC 05-159, (August 23, 2005) [hereinafter Report and Order].

² The Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA), Pub. L. No. 108-447, § 210, 118 Stat 2809 (2004) [hereinafter SHVERA].

A plain statutory interpretation of the term “State” in SHVERA includes all of the Territories and Possessions of the United States. If Congress intended to exclude the Territories and Possessions, Congress would have limited the scope of the statute by simply stating that SHVERA only applies to Hawaii and Alaska. Instead, Congress expressed the broader meaning of “State” by including the phrase, “a State that is not part of the contiguous United States.”³ The statutory language of SHVERA and even the legislative record are silent on the meaning of “State.” In light of a silent statutory language and legislative record, Section 153 of the Communications Act of 1934, as amended (“Communications Act”) and its definition of “State” is controlling.⁴ The Communications Act defines “State” as including “the District of Columbia and the Territories and possessions.”⁵

EchoStar and DIRECTV’s argument that technically it is impossible for them to offer service to all of the Territories and Possessions is irrelevant to the statutory interpretation of the definition of “State.”⁶ The statutory language may mandate the technically impossible. It is misplaced for the Commission to make a statutory interpretation that relies on arguments that are extrinsic to the plain statutory language and the legislative record.

If the Commission intends to take into consideration the technical problems with providing service as a reason to interpret the meaning of “State” narrowly, this argument fails for Puerto Rico. It is technically feasible to provide service to Puerto Rico because both EchoStar and DIRECTV already provide service there. In fact, both digital broadcast satellite (DBS)

³ SHVERA, *supra* note 2 at § 210.

⁴ 47 USC § 153(40).

⁵ *Id.*

⁶ Report and Order, *supra* note 1 at para 9.

providers acknowledge they provide service in Puerto Rico.⁷ While it is true that it may not be technically feasible to serve all Territories and Possessions it was technically feasible to provide service to Puerto Rico when SHVERA was enacted. If the DBS providers' arguments are accepted, then the congressional intent of the definition of "State" only included those noncontiguous States including Territories and Possessions that the DBS providers could serve, which includes Puerto Rico and excludes all other Territories and Possession that DBS providers cannot serve.

The determination by the Commission that Puerto Rico is not in a DMA is inaccurate. In fact it clearly states in the cable and multiple ownership rules that Puerto Rico is considered a single market DMA.⁸ The FCC even created a DMA for Puerto Rico in the Multichannel Video Distribution and Data Service ("MVDDS") service area rules and in the subsequent auction.⁹ Without specific congressional intent to exclude Puerto Rico as a DMA, the Commission does not have the authority to *sua sponte* exclude Puerto Rico. Classifying Puerto Rico as its own DMA in some rules and not in others creates an inconsistency and arbitrariness in the rules that leads to manifest inequity and illegality.

The Report & Order argues that if Congress wanted to include Puerto Rico within the scope of SHVERA it would have done so in Section 338 which only added Alaska. Alaska was in a unique position where portions of the State were not located within any DMA while some portions were. This unique situation needed additional clarification from Congress which

⁷ DIRECTV Comments at 10. EchoStar Comments at pg 4.

⁸ 47 CFR § 76.55(e). 47 CFR § 73.35555.

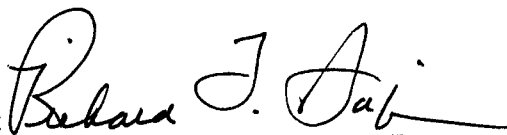
⁹ 47 CFR § 101.1401. Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures, *Public Notice*, 18 FCC Rcd 17553 (2003). Auction of Multichannel Video Distribution and Data Service Licenses Rescheduled for June 25, 2003, *Public Notice*, 18 FCC Rcd 1105 (2003).

included this language to clarify any potential legislative oversight. Puerto Rico would not have been mentioned in this section because as stated earlier Puerto Rico is in a single market DMA. While the Commission understands the congressional silence on this point as an intent to exclude Puerto Rico, petitioners argue the opposite, that the silence denotes congressional understanding that Puerto Rico is included in a DMA.

CONCLUSION

Petitioners request reconsideration of the Commission's Report & Order as it pertains to the definition of "State." A plain statutory interpretation of the meaning of "State" includes all Territories and Possessions. The Commission's argument that it is technically impossible to provide service to all the Territories and Possessions is irrelevant to the statutory interpretation of "State." Even though it may not be technically feasible to provide service in certain Territories and Possessions, it is feasible in Puerto Rico where there is current DBS service. Because Commission treats Puerto Rico as a single market DMA for cable, multiple ownership and MVDDS rules, it cannot capriciously change that determination for application of the DBS rules. Alaska was in a unique situation where portions of the State were not in any DMA which is why Section 338 only refers to Alaska.

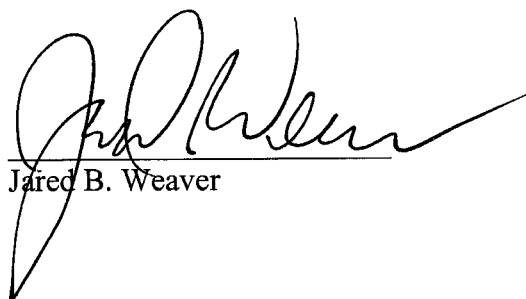
Respectfully submitted,

By: 

Richard F. Swift
Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Avenue, N.W.
Suite 200
Washington, D.C. 20036-3101
Tel: (202) 728-0400
Fax: (202) 728-3654
Their Attorneys

Service of Process

I, Jared B. Weaver, hereby certify that on this 22nd day of September, 2005, true and correct copies of the foregoing **PETITION FOR RECONSIDERATION** have been served via electronic mail to the following:



Jared B. Weaver

William M. Wiltshire
Michael Nilsson
Harris, Wiltshire & Grannis LLP
1200 18th Street, NW
Washington, DC 200036
Counsel for DIRECTV, Inc.
wwiltshire@harriswiltshire.com
mnilsson@harriswiltshire.com

Pantelis Michalopoulos
Rhonda M. Bolton
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, D.C. 200036
Counsel for EchoStar Satellite, LLC
pmichalopoulos@steptoe.com
rbolton@steptoe.com